Supreme Court, U.S.
FILED
DEC 22 1998
OFFICE OF THE CLERK

No. 98-830

In The

# Supreme Court of the United States

October Term, 1998

AMOCO PRODUCTION COMPANY,
on behalf of itself and the class it represents,

*Petitioners,*

v.

SOUTHERN UTE INDIAN TRIBE,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit**

## *AMICI CURIAE* BRIEF OF MOUNTAIN STATES LEGAL FOUNDATION, WYOMING FARM BUREAU FEDERATION, MONTANA FARM BUREAU FEDERATION, UTAH FARM BUREAU FEDERATION, AND NEW MEXICO FARM & LIVESTOCK BUREAU IN SUPPORT OF PETITIONERS

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## QUESTION PRESENTED

Whether, in reserving to the United States "coal" in the lands patented under the 1909 and 1910 Coal Land Acts, 30 U.S.C. §§ 81, 83-85, while passing the surface and all the other minerals (including natural gas) to the patentee, Congress reserved only the solid rock fuel commonly known as "coal," but not natural gas in coal formations, as the Department of Interior determined in a formal Solicitor's opinion entitled to judicial deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

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## *AMICI CURIAE* BRIEF OF MOUNTAIN STATES LEGAL FOUNDATION, WYOMING FARM BUREAU FEDERATION, MONTANA FARM BUREAU FEDERATION, UTAH FARM BUREAU FEDERATION, AND NEW MEXICO FARM & LIVESTOCK BUREAU IN SUPPORT OF PETITIONERS

Mountain States Legal Foundation respectfully submits this *amici curiae* brief on behalf of itself, the Wyoming Farm Bureau Federation, the Montana Farm Bureau Federation, the Utah Farm Bureau Federation, and the New Mexico Farm & Livestock Bureau in support of Petitioners. Pursuant to Supreme Court Rule 37(2)(a) this *amici curiae* brief is filed with the written consent of all the parties.[1]

### IDENTITY AND INTEREST OF *AMICI CURIAE*

Mountain States Legal Foundation ("MSLF") is a non-profit, public interest legal foundation organized under the laws of the State of Colorado. MSLF is dedicated to bringing before the courts those issues vital to the defense and preservation of private property rights, individual liberties, limited government, and the free enterprise system. MSLF's members include individuals

[1] Copies of the consent letters have been filed with the Clerk of the Court. In compliance with Supreme Court Rule 37(6), *amici curiae* represent that no counsel for any party authored this brief in whole or in part, and that no person or entity, other than *amici curiae* and their members, made a monetary contribution for the preparation or submission of this brief.

and businesses from every state in the Union. Over one thousand of MSLF's members own property in Wyoming, Montana, Utah, and New Mexico, *i.e.*, States that have major reserves of coalbed gas. Petitioners' Appendix ("Pet. App.") at 181a.

Wyoming Farm Bureau Federation ("WFBF") is a voluntary, non-profit, general farm and ranch organization incorporated under the laws of the State of Wyoming. WFBF represents the economic, educational, and social interests of more than 8,500 member families throughout the State of Wyoming. Fifty percent of the commercial farmers and ranchers in the State of Wyoming are members of WFBF.

Montana Farm Bureau Federation ("MFBF") is a voluntary, non-profit, general farm and ranch organization incorporated under the laws of the State of Montana. MFBF represents the economic, educational, and social interests of more than 8,200 member families throughout the State of Montana. Twenty percent of the commercial farmers and ranchers in the State of Montana are members of MFBF.

Utah Farm Bureau Federation ("UFBF") is a voluntary, non-profit, general farm and ranch organization incorporated under the laws of the State of Utah. UFBF represents the economic, educational, and social interests of more than 22,000 member families throughout the State of Utah. A large majority of the commercial farmers and ranchers in the State of Utah are members of UFBF.

New Mexico Farm & Livestock Bureau ("NMFLB") is a voluntary, non-profit, general farm and ranch organization incorporated under the laws of the State of New



Mexico. NMFLB represents the economic, educational, and social interests of more than 14,500 member families throughout the State of New Mexico. Ninety percent of the commercial farmers and ranchers in the State of New Mexico are members of NMFLB.

Many of *amici's* members own lands that were patented under the various homestead laws and from which the coal was reserved to the United States pursuant to the 1909 and 1910 Coal Land Acts. Many of these members either actually settled the land they own or are direct descendants of the original settlers. A significant portion of these lands are located in areas that have huge potential for the production of coalbed gas, *i.e.*, Powder River Basin (39 trillion cubic feet of gas ("Tcf")), Green River Basin (31 Tcf), Unita Basin (10 Tcf), San Juan Basin (88 Tcf), and Raton Basin (18 Tcf). Pet. App. at 181a.

The U.S. Department of the Interior has long recognized that the United States reserved only the solid rock fuel "coal" in the 1909 and 1910 Acts. *See, Ownership of and Rights to Extract Coalbed Gas in Federal Coal Deposits* (M-36935), 88 Interior Dec. 538 (1981) (Pet. App. at 140a-159a). Based upon this interpretation, many amici's members granted the right to oil and gas companies to explore for and produce the gas, including coalbed gas, from beneath their properties in return for the payment of royalties based upon the amount of production. These royalty payments are a much-needed supplement to the income these members earn from their farming and ranching operations that feed this Nation. Many of these members desperately need these royalty payments for loan payments, farming and ranching equipment, their

children's education, health care, and an adequate retirement.

The Tenth Circuit's decision has disrupted the settled expectations of these members and will cause these members severe economic hardship. Under the Tenth Circuit's decision, many of these members may no longer be able to receive the royalty payments that they have come to expect. Other members may never receive any royalty payments even though their mineral estates contain huge coalbed gas deposits. Even more serious is the fact that under the Tenth Circuit's decision, members who have leased the right to explore for and develop the gas deposits underlying their lands may now may be subject to claims of conversion, trespass, and/or breach of warranty of title. If the Tenth Circuit's decision remains unchecked, these members may not be able to provide for their families, may be forced into bankruptcy, and may be driven out of the farming and ranching business – a lifestyle they love and an industry that the Nation depends on. Because *amici* have a significant interest in the issue in this case, they respectfully submit this brief in support of the Petition for *Writ of Certiorari*.

## OPINIONS BELOW, JURISDICTION, AND STATEMENT OF THE CASE

*Amici* hereby adopt Petitioners' description of the opinions below, statement of jurisdiction, and statement of the case. *See*, Petitioners' Brief ("Pet. Bf.") at 1-13.



## SUMMARY OF ARGUMENT

This Court should grant *certiorari* in this case for several reasons. First, the issue in this case is of national importance because it directly affects over 20 million acres and millions of American citizens. Second, although Congress passed legislation in a limited effort to reduce the impact of the Tenth Circuit's decision, that legislation did not answer the underlying issue in this case, it does not apply to millions of unleased acres, and it may have created more problems. Finally, the Tenth Circuit violated this Court's well-established principles of statutory construction and deference to agency interpretations.

## ARGUMENT

### I. THIS COURT SHOULD GRANT *CERTIORARI* BECAUSE THE ISSUE IN THIS CASE IS OF NATIONAL IMPORTANCE.

#### A. The Tenth Circuit's Decision Affects 20 Million Acres And Millions of Property Owners Throughout The West.

It has been the policy of this Court to grant *certiorari* in cases where an interpretation of a federal land grant statute has upset the settled expectations of millions of property owners. For example, in *Leo Sheep Co. v. United States*, 440 U.S. 668, 669 (1979), this Court granted *certiorari* to determine whether the United States, *sub silentio*, reserved an easement for the public to cross lands that were granted to Union Pacific Railroad. Because this issue affected "property rights in 150 million acres of land[,]" this Court granted certiorari. *Id.* at 678. Similarly,

in *Andrus v. Shell Oil Company*, 446 U.S. 657, 659 (1980), this Court granted *certiorari* to decide whether oil shale deposits located prior to the Mineral Leasing Act, 30 U.S.C. § 181 *et seq.*, were patentable under the savings clause in that Act. At stake was the ownership of hundreds of thousands of acres of lands located primarily in Colorado, Wyoming, and Utah. "[B]ecause of the importance of the question to the management of the public lands[,]" this Court granted *certiorari*. *Id.* at 663. Finally, in *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 37-38 (1983) this court granted *certiorari* to determine whether the "mineral" reservation in the Stock-Raising Homestead Act of 1916, 43 U.S.C. §§ 291-302, included gravel. Because of the importance of the issue "to the administration of more than 33 million acres of lands patented under the [Act]," this Court granted *certiorari*.[2] *Id.* at 42.

The issue in this case is far more important than the issues faced by this Court in *Leo Sheep*, *Shell Oil*, and *Western Nuclear*. The Tenth Circuit's decision affects coalbed gas reserves worth billions of dollars. Pet. Bf. at 14-15. If the Tenth Circuit's decision is allowed to stand, these reserves will never be developed; thus, injuring the mineral and royalty owners, destroying the economies of

[2] In *Andrus v. Charleston Stone Products Co., Inc.*, 436 U.S. 604, 605-606 (1978), this Court granted *certiorari* to determine whether water is a "valuable mineral" subject to entry and location under the General Mining Law of 1872, 30 U.S.C. § 21 *et seq.* Although not expressly stated in the decision, the fact that this issue affected all unappropriated and unreserved federal lands was certainly a major factor in the granting of *certiorari*.



the counties where these reserves are located, and depriving this Nation of a valuable clean-burning energy source.

More importantly, the Tenth Circuit's decision affects over 20 million acres of patented lands from which the United States reserved the coal pursuant to the 1909 and 1910 Acts, and related Acts. Pet. Bf. at 24. Because most of these lands were patented in 160 acre parcels, *see*, The Homestead Act (12 Stat. 392-93 (1864)), the Tenth Circuit's decision affects over 100,000 patents. Because many of the original settlers have transferred interests in the mineral estate they received from the United States to their descendants, heirs, and good faith lessees, the Tenth Circuit's decision could potentially affect millions of mineral and royalty owners. Therefore, this Court should grant *certiorari* to resolve the uncertainty in titles created by the Tenth Circuit's decision. *See, Leo Sheep*, 440 U.S. at 687 ("[t]his Court has traditionally recognized the special need for certainty and predictability where land titles are concerned").

### B. The Fact That Congress Passed Legislation In A Limited Effort To Reduce The Impact Of The Tenth Circuit's Ruling Should Not Affect This Court's Decision To Grant *Certiorari*.

Outraged over the Tenth Circuit's ruling, Congress quickly passed legislation in a limited effort to reduce the impact of the ruling. P.L. No. 105-367, 112 Stat. 3312 (1998) ("Enzi Act"). The Enzi Act provides, *inter alia*, that "the United States shall recognize as not infringing upon any ownership rights of the United States" any existing

oil and gas lease or state drilling permit issued for the extraction of coalbed gas from coal reserved to the United States pursuant to the 1909 and 1910 Acts. *Id.*

Although well intentioned, the Enzi Act does not answer the question of who owns the coalbed gas or solve the problems created by the Tenth Circuit's decision. For example, the Enzi Act does not apply to interests in coal previously transferred by the United States to Indian tribes or other third parties. *Id.* More significantly, the Enzi Act does not apply to future oil and gas leases. *Id.* For example, in Montana, where coalbed gas development is in its early stages, the United States reserved the coal in 6.6 million acres under the 1909 and 1910 Acts. Therefore, mineral owners who have not yet entered into an oil and gas lease or sought to produce the gas from their mineral estate may only develop those reserves (and thereby reap the benefit therefrom) at a substantial risk. Accordingly, this Court should grant *certiorari* because Congress' limited effort to reduce the impact of the Tenth Circuit's ruling does not solve the problems created by that ruling.

## II. THIS COURT SHOULD GRANT *CERTIORARI* BECAUSE THE TENTH CIRCUIT VIOLATED THIS COURT'S WELL-ESTABLISHED PRINCIPLES OF STATUTORY CONSTRUCTION AND DEFERENCE TO AGENCY INTERPRETATIONS.

### A. The Tenth Circuit Should Have Applied The Ordinary Meaning Of The Term "Coal."

The issue in this case involves a simple question of statutory interpretation: does the reservation of "coal" in



the 1909 and 1910 Acts include coalbed gas? In interpreting a statute a court must give effect to the intent of Congress. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570 (1982). The controlling intent is that of the Congress that actually passed the particular statute being interpreted. *Leo Sheep*, 440 U.S. at 681 ("[t]he pertinent inquiry in this case is the intent of Congress when it granted land to the Union Pacific in 1862"). The first place to look for that intent is the language of the statute itself. *United States v. Denver & Rio Grande Ry. Co.*, 150 U.S. 1, 10-12 (1893). When looking at the language of the statute, a court must "assume" that congressional intent is reflected by the ordinary meaning of the words used. *United States v. Labonte*, 520 U.S. 751, ___, 177 S.Ct. 1673, 1677 (1997) (citing *Moskal v. United States*, 498 U.S. 103, 108 (1990)); *Russello v. United States*, 464 U.S. 16, 21 (1983).

Applying this Court's well-established principles of statutory construction to the issue in this case reveals that when Congress passed the 1909 and 1910 Acts it intended to reserve only the solid rock fuel "coal." At that time, the term "coal" was consistently used to refer to the Nation's primary energy source, *i.e.*, the solid rock fuel.[3] *Southern Ute Indian Tribe v. Amoco Production Co.*, 874 F.Supp. 1142, 1154 (D. Colo. 1995) (Pet. App. 123a-124a). This meaning was in accordance with the definitions of the term "coal" found in the dictionaries of that time. *Southern Ute Indian Tribe v. Amoco Production Co.*, 1998 WL 404549 **15-16

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[3] By contrast, coalbed gas (which was then commonly referred to as "marsh gas") was a dangerous by-product of coal mining for which there was no present or future value. Pet. Bf. at 16-17.

(10th Cir.) (Tacha, J., dissenting) (reviewing dictionaries and general reference works of that era all of which described coal as a solid material) (Pet. App. 35-36). Thus, based upon the plain meaning of the term "coal" and simple common sense, Congress intended for the term "coal" in the 1909 and 1910 Acts to mean only the solid rock fuel.

The Tenth Circuit, however, failed to follow the teachings of this Court and created it own principles of statutory construction. Although the term "coal" has had a well-known meaning throughout the history of this Nation, the Tenth Circuit concluded that the term was "ambiguous." *Southern Ute Indian Tribe*, 1998 WL 404549 **4 (Pet. App. 14a). The Tenth Circuit based this conclusion on the fact that neither the 1909 Act nor the 1910 Act defined the term. *Id.* Based upon this purported ambiguity, the Tenth Circuit applied the presumption that ambiguities in federal land grants should be construed in favor of the sovereign and, therefore, gave the term "coal" its broadest possible meaning to include coalbed gas. *Id.*

The failure of Congress to expressly define "coal" in the 1909 and 1910 Acts does not mean that the term is ambiguous. *Southern Ute Indian Tribe*, 1998 WL 404549 at **17 (Tacha, J. dissenting) ("[s]ilence does not equate with ambiguity") (Pet. App. 40a). Indeed, under the Tenth Circuit's analysis, every undefined term in a statute would be ambiguous. That is why this Court has ruled that when Congress does not define a term in a statute, that term is to be construed in accordance with its ordinary meaning. *United States v. Smith*, 508 U.S. 223, 228 (1993) (citing *Perrin v. United States*, 444 U.S. 37, 44



(1979)). As demonstrated above, the ordinary meaning of "coal" is the solid rock fuel. Therefore, the Tenth Circuit violated this Court's well-established principles of statutory construction when it concluded that the term "coal" in the 1909 and 1910 Acts meant anything more than the solid rock fuel.

### B. The Tenth Circuit Should Have Deferred To The Long-Standing Interpretation Of The Department Of The Interior.

Even if the term "coal" could somehow be construed to be ambiguous, the Tenth Circuit should not have applied the presumption that ambiguities in federal land grants should be construed in favor of the sovereign. To the contrary, the Tenth Circuit should have deferred to the long-standing interpretation of the Department of the Interior as this Court's previous decisions demand.

Since 1909, the Department of the Interior has consistently interpreted the term "coal" in the 1909 and 1910 Acts as meaning only the solid rock fuel. Shortly after the 1909 Act was enacted, the Department of the Interior issued a regulation to be applied when determining whether public lands contained valuable "coal" deposits. *Classification and Valuation of Coal Lands*, 37 Pub. Lands Dec. 653 (1909) (Pet. App. 137a-139a). That regulation mandated that coal deposits be classified based on gas free samples and valued on a per ton basis. *Id.* If the Department of the Interior believed the term "coal" to also include the worthless – and dangerous – "marsh gas," it would not have classified and valued coal deposits in such a manner. *See, Circular*, 38 *Int. Dec.* 183,

184 (1909) (construing 1909 Act to require the reservation of "coal" only in lands "chiefly valuable for coal"). For over eighty years, the Department never wavered from this interpretation. In fact, the Department of the Interior expressly ratified its interpretation on two separate occasions. *Ownership of and Rights to Extract Coalbed Gas in Federal Coal Deposits* (M-36935), 88 Interior Dec. 538 (1981) (Pet. App. 140a-159a); *Rights to Coalbed Methane Under an Oil & Gas Lease for Lands in the Jicarilla Apache Reservation*, 98 Interior Dec. 59 (1990) (Pet App. at 160a-177a).

Because the Department of the Interior had a long-standing, consistent interpretation of the term "coal," the Tenth Circuit should have deferred to that interpretation. Indeed, as explained by this Court:

> When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. . . . "Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new.' "

*Udall v. Tallman*, 380 U.S. 1, 16 (1965) (quoting *Power Reactor Development Co. v. International Union of Electricians*, 367 U.S. 396, 408 (1961); *accord, Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 884 (1984) ("considerable weight should be accorded to an executive department's construction of a statutory provision"). More importantly, when the Department of Interior interprets a federal land grant statute, the amount of



deference to be accorded to that interpretation is even greater. *See, United States v. Hammers*, 221 U.S. 220, 228-229 (1911). This greater deference is based upon the fact that the Department of the Interior's interpretation of those statutes affects interests in real property where certainty in title is paramount.[4] *Barden v. Northern Pacific R. Co.*, 154 U.S. 288, 326 (1894); *Leo Sheep*, 440 U.S. at 687. Accordingly, this Court should grant *certiorari* because the Tenth Circuit blatantly ignored previous decisions of this Court when it failed to defer to the long-standing interpretation of the Department of the Interior.

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[4] Interestingly, Judge Seymour, who authored both the panel and *en banc* decisions, previously recognized this rule of deference. *Aulston v. United States*, 915 F.2d 584 (10th Cir. 1990) (granting deference to the Department of the Interior's interpretation of the term "gas" in the Agricultural Entry Act of 1914, 30 U.S.C. §§ 121-125). Because Judge Seymour failed to follow this rule of deference in the instant case, she upset the settled expectations of millions of mineral and royalty owners.

## CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court grant the Petition for *Writ of Certiorari*.

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Dated: December 22, 1998